WILLIAM H. GOODMAN (WG-6499)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012

JONATHAN C. MOORE, Esq. (JM-6902)
MICHAEL DEUTSCH, Esq.
740 Broadway at Astor Place
New York, New York 10003
(212) 353-9587

Attorneys for the Plaintiffs

CV 99 160

GLEESON, J.

GO, M.J.

U.S. DISTRICT COURT EASTERN DISTRICT OF N.Y. CLERK

1999 JAN 11 P 2:10

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LILIAN FLORES, Individually, and as Administratrix of the goods, chattels and credits that were of Frankie Arzuaga, deceased,	x	
Plaintiff,	x	**99 Civ.**
-against-	x	**COMPLAINT**
THE CITY OF NEW YORK, a municipal corporation; RUDOPLH GIULIANI, Mayor of the City of New York; HOWARD SAFIR, Commissioner of the New York City Police Department; JAMES A. HAND, Sergeant; ALFRED SANDURO, police officer; DIANA SIERRA, police officer; in their invidiaul and official capacities jointly and severally,	x	**JURY TRIAL DEMANDED**
Defendant.	x	

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PRELIMINARY STATEMENT

Plaintiff, LILLIAN FLORES, individually and as administratrix of the estate of her deceased son, Frankie Arzuaga, by and through her attorneys, the CENTER FOR CONSTITUTIONAL RIGHTS and JONATHAN C. MOORE, Esq., and, for her complaint against the Defendants, states as follows against the Defendants jointly and severally.

INTRODUCTION

1. This action is brought pursuant to 42 U.S.C. §§1983 and 1988, as well as the Fourth and Fourteenth Amendments to the United States Constitution, by Plaintiff Lillian Flores ("Plaintiff") both in her own capacity and as personal representative for the estate of her deceased son Frankie Arzuaga ("Frankie") for violations of his constitutional rights by New York City Police Department ("NYPD") and its employees Sergeant James A. Hand ("Sergeant Hand"), Officer Alfred Sanduro ("Officer Sanduro") and Officer Diana Sierra ("Officer Sierra"), New York City Police Department Commissioner Howard W. Safir ("Safir"), and New York City Mayor Rudolph Giuliani ("Giuliani") (collectively "Defendants").

2. Plaintiff alleges that on or about January 12, 1996, Plaintiff's decedent, Frankie Arzuaga, was shot and killed, his resultant death having occurred on January 13,1996. Sergeant Hand fired the shots that struck and killed Frankie Arzuaga; at all pertinent times, Sgt Hand acted jointly and in concert with Officers Sanduro and Sierra. At the time he was shot, Frankie Arzuaga was riding as a passenger in a car.

3. Plaintiff further contends that Defendants Giuliani, Safir and the City of New York (the "City") are individually, jointly and severally liable for those violations of Frankie Arzuaga's constitutional rights in that Defendants Giuliani, Safir and the City have: (1) tolerated, condoned and encouraged a pattern of brutality and use of excessive force by members of the NYPD against New York City residents, in particular residents of communities of color; (2) failed to properly and adequately monitor and investigate such incidents and to supervise and discipline the officers involved, and; (3) created an environment and culture in which officers are

encouraged to conceal the misconduct of other officers resulting in the current situation in the NYPD where officers believe that they can violate with impunity the rights of persons such as Frankie Arzuaga; (4) inadequately trained police officers with regard to proper firearms usage; (5) inadequately selected, trained, monitored and supervised police officers and police officer supervisors.

JURISDICTION

4. Jurisdiction is conferred upon this Court by 28 U.S.C. §§1331, 1343(3), this being an action seeking redress for violation of the Plaintiff's constitutional and civil rights.

5. Plaintiff's claim for declaratory and injunctive relief is authorized by 28 U.S.C. §2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

6. The Plaintiff demands a trial by jury on each and every one of her claims as pled herein.

VENUE

7. Venue is proper for the United States District Court for the Eastern District of New York pursuant to 29 U.S.C. §621 et seq., and 28 U.S.C. §§1391 (a), (b) and (c).

PARTIES

8. The Plaintiff, LILLIAN FLORES and the deceased were, at all times relevant herein, residents of the Borough of Brooklyn, County of Kings, State of New York.

9. Defendant NEW YORK CITY POLICE OFFICER ALFRED SANDURO, is and was at all times relevant herein an officer, employee, and agent of the NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the CITY OF NEW YORK. Defendant NEW YORK CITY POLICE OFFICER ALFRED SANDURO is sued individually and in his official

capacity.

10. Defendant NEW YORK CITY POLICE OFFICER DIANA SIERRA, is and was at all times relevant herein an officer, employee, and agent of the NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the CITY OF NEW YORK. Defendant NEW YORK CITY POLICE OFFICER DIANA SIERRA is sued individually and in his official capacity.

11. Defendant NEW YORK CITY POLICE SERGEANT JAMES A. HAND, is and was at all times relevant herein an officer, employee, and agent of the NEW YORK CITY POLICE DEPARTMENT, a municipal agency of the CITY OF NEW YORK. Defendant NEW YORK CITY POLICE SERGEANT JAMES A. HAND is sued individually and in his official capacity.

12. Defendant RUDOLPH GIULIANI is and was at all times the Mayor of the City of New York and is the chief policy-making official for the City of New York and its departments, including the NEW YORK CITY POLICE DEPARTMENT. He is sued individually and in his official capacity.

13. Defendant NEW YORK CITY POLICE COMMISSIONER HOWARD SAFIR was, at all times relevant herein, the Police Commissioner for the CITY OF NEW YORK, and was and is responsible for, and the chief architect of, the policies, practices and customs of the NEW YORK CITY POLICE DEPARTMENT as well as responsible for the hiring, screening, training, retention, supervision, discipline, counseling and control of the police officers under his command. He is sued individually and in his official capacity.

14. At all times relevant herein, the individual Defendants herein were acting under color of state law in the course and scope of their duties and functions as agents, servants,

employees and officers of the NEW YORK CITY POLICE DEPARTMENT and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the NEW YORK CITY POLICE DEPARTMENT at all times relevant herein with the power and authority vested in them as officers, agents and employees of the NEW YORK CITY POLICE DEPARTMENT and incidental to the lawful pursuit of their duties as officers, employees and agents of the NEW YORK CITY POLICE DEPARTMENT.

15. Defendant CITY OF NEW YORK is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department which acts as its agent in the area of law enforcement and for which it is ultimately responsible. The defendant CITY OF NEW YORK assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risk attaches to the public consumers of the services provided by the NEW YORK CITY POLICE DEPARTMENT.

STATEMENT OF FACTS

16. On January 12, 1996 between the hours of 11:00 p.m. and 12:00 a.m. Frankie Arzuaga was a passenger in the back seat of a car which was stopped in the vicinity of Meserole and Leonard streets in the Williamsburg section of Brooklyn, New York.

17. At this time, an unmarked police vehicle carrying New York City Police Sergeant Hand, and New York City Police Officers Sanduro and Sierra was stopped in the vicinity of the car in which Frankie was traveling.

18. Defendants Hand, Sanduro and Sierra, all in plainclothes, exited their unmarked vehicle and approached the car in which the decedent was a passenger.

19. On information and belief, Defendants Hand, Sanduro and Sierra approached the car in which the decedent was a passenger in a reckless manner, without properly identifying themselves as police officers.

20. Officer Sanduro came up to the driver's side window, while Sergeant Hand and Officer Sierra positioned themselves behind the car.

21. Freightened and startled by the presence of a stranger at his window, the driver of the car started to pull away through the intersection. At this time Sergeant Hand fired multiple shots into the car, one of which hit Frankie Arzuaga, as a result of which shooting he later died.

22. This shooting, which was done directly by Defendant Hand and which resulted from the joint and concerted conduct of Defendants Hand, Sanduro and Sierra, constituted the use of deadly force against Frankie Arzuaga who had done nothing which could even arguably allow for or permit the use of deadly force. As such, the shooting and killing of Plaintiff's decedent was objectively unreasonable and constituted an unreasonable seizure within the meaning of the Fourth and Fourteenth Amendments and, consequently, a violation of 42 U.S.C. § 1983.

23. Frankie Arzuaga's shooting and death were as a direct and proximate result of the aforementioned violations of rights conferred by the United States Constitution and the wrongful acts and omissions perpetuated by Defendants Hand, Sanduro and Sierra, while acting under color of law and pursuant to customs, policies and/or procedures all in violation of 42 U.S.C. § 1983.

24. As a direct and proximate result of the wrongful acts described above, the Plaintiff, in her own right and acting on behalf of the Estate of Frankie Arzuaga and as the

representative of the next of kin of the decedent, has sustained the following injuries and damages:

a) conscious pain and suffering;

b) the loss of the love, society, companionship and affection to the next of kin of the deceased.

25. At all times herein the actions of the defendants were willful and malicious so as to entitled the Plaintiff to punitive damages as allowed under 42 U.S.C. §1983.

FIRST CLAIM
(Violation of Rights Secured by 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution for Assaulting and Detaining the Plaintiff)

26. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 25 as if fully set forth herein.

27. The conduct and actions of Defendants HAND, SANDURO and SIERRA, acting jointly and severally under color of law, in inflicting excessive and deadly force on the Plaintiff's decedent was done intentionally, maliciously and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the Plaintiff decedent's Constitutional rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

SECOND CLAIM
(Violation of Rights Secured by 42 U.S.C. §1983 and the Fourteenth Amendment to the United States Constitution by Failing to Protect the Plaintiff from Unconstitutional Harm)

28. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1

through 27 as if fully set forth herein.

29. The conduct and actions of Defendants HAND, SANDURO and SIERRA, acting jointly and severally under color of law, in failing to take any steps to protect the plaintiff from unjustified and unconstitutional excessive and deadly force was done intentionally, maliciously and/or with a reckless disregard for the natural and probable consequences of their acts, was done without lawful justification, and was designed to and did cause specific and serious bodily, mental and emotional harm, pain and suffering in violation of the Plaintiff decedent's Constitutional rights as guaranteed under 42 U.S.C. §1983, and the Fourteenth Amendment to the United States Constitution.

THIRD CLAIM
(Loss of Consortium Claim for Plaintiff Lillian Flores Under 42 U.S.C. §1983)

30. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 29 as if fully set forth herein.

31. At all times mentioned, Plaintiff LILLIAN FLORES was the natural mother of the decedent FRANKIE ARZUAGA, and as such was entitled to the comfort, enjoyment, companionship, support, society and services of her son.

32. By reason of the foregoing conduct of Defendant police officers HAND, SANDURO AND SIERRA, acting under color of state law while they were on duty and in uniform, Plaintiff LILLIAN FLORES was deprived of the comfort, enjoyment, companionship, support, society and services of her son, which are guaranteed under the Fourteenth Amendment of the United States Constitution, including Plaintiff LILLIAN FLORES'S liberty interest in preserving the integrity and stability of the family relationship from intervention by the state

without due process of law.

FOURTH CLAIM
(Monell Claim Against the Municipal Defendants)

33. The plaintiff incorporates by reference the allegations set forth in Paragraphs 1 through 32 as if fully set forth herein.

34. At all times material to this complaint, the defendant CITY OF NEW YORK, acting through its police department and its Police Commissioner defendant HOWARD SAFIR and the Mayor of the City, RUDOLPH GIULIANI, had in effect de facto policies, practices, and customs exhibiting deliberate indifference to the constitutional rights of the citizens and residents of the City of New York and that were a direct and proximate cause of the unconstitutional conduct of defendants HAND, SANDURO and SIERRA, and of the resultant official coverup of the wrong and unconstitutional conduct of these officers.

35. These de facto policies, practices and customs include, inter alia: (a) the failure to properly screen, supervise, discipline, transfer, counsel, and/or otherwise control police officers engaged in the excessive and unjustified use of force, particularly those police officers who are repeatedly accused of such acts; (b) the failure to properly train and supervise police officers in the use of deadly force; and (c) the police code of silence wherein police officers regularly coverup police use of excessive and unjustified force by telling false and incomplete stories, or by failing to report the use of excessive and unjustified force by police officers, inter alia, in sworn testimony, official reports, in statements to the Civilian Complaint Review Board ("CCRB") and the Internal Affairs Bureau, and in public statements, all of which are designed to cover for and/or falsely exonerate the accused police officers.

36. The policy, practice and custom of failing to screen, discipline, supervise, counsel, transfer, and/or control police officers, is evidenced, inter alia, by the following:

a. The increase in the number of allegations of excessive force complaints filed with the CCRB. Although, the percentage of excessive force allegations out of the total number of allegations of police misconduct made to the CCRB remained steady at 40 percent in 1995 and 1996 (compared to the 1991-1992 period), the absolute number of allegations of excessive force, however, increased by 2000 between the two periods. Civilian Complaint Review Board Semi-Annual Reports, Vols. I - III.

b. Allegations of excessive force and other forms of police misconduct disproportionately affect the minority communities. For example, African Americans, who comprise 29 percent of the population of New York City, represent approximately 50 percent of all persons who filed police misconduct complaints from July 1993 through the end of 1995. Id.

c. The CCRB (newly constituted as a civilian, rather than police, agency in July 1993), substantiated only 4.2 percent of all complaints it received from July 1993 through the end of 1996, a rate well below that of other major cities. In this same period, of the 16,327 complaints handled by the CCRB, only 1% or 180 of those cases resulted in the Police Commissioner disciplining an officer.

d. Almost 75% of all cases investigated by the CCRB do not receive a full review to determine if misconduct has occurred. Of the 12,740 complaints received by the CCRB during the period July, 1993 until the end of 1995, only 27 percent received what the CCRB characterizes as a "full review." Of the 10,611 complaint files closed out by the CCRB during that period, only 8 percent were closed based upon an investigative record that was even sufficient to support a finding as to whether or not misconduct had occurred. Civilian Complaint Review Board Semi-Annual Reports, Vols. I - III.

e. The CCRB has recommended some form of discipline in only 1.8 percent of the cases which it disposed of from July 1993 to December 1995 (i.e., 193 recommendations of discipline out of 10,611 complaints disposed of). There were an additional 238 cases in which the CCRB found that the complaints were substantiated, but in which it made no recommendation of discipline to the police department. The corresponding rate of CCRB discipline recommendation for the first six months of 1996 was only half the rate of the previous two and a half years, .9 percent (26 recommendations of discipline out of 2,899 complaints disposed of), with an additional 124 cases in which the CCRB made no recommendation of discipline on substantiated complaints. Id.

f. Rarely, if ever, do police officers face serious punishment as a result of CCRB investigations. For example, in 1995, the New York City Police Department disposed of 61 cases in which charges and specifications had been filed by the CCRB. Of those, 7 resulted in guilty verdicts after departmental trials, 11 resulted in acquittals, and 43 were dismissed because the statute of limitations had expired. Id.

g. In 1996, only 52 officers out of a force of 38,000 -- the largest police department in the country -- were punished because of action taken by the CCRB. In 70 percent of those instances, the discipline constituted a stern lecture or the loss of one vaction day. Only four officers were suspended, one was placed on probation, and three forfeited more than 10 days' vacation time.

h. Of the complaints that are substantiated by the CCRB, most do not result in any kind of meaningful discipline. For instance, as of November 14, 1991, of the 81 officers who faced departmental trials in 1991, 47 were cleared, and 34 were disciplined with penalties ranging from loss of vacation to a 90-day suspension.

i. Rarely, if ever, are police officers fired for brutality, and to the extent that it happens at all, the number of such cases has decreased since 1988. In 1988 only six police officers were fired for brutality. In 1989 only four police officers were fired for brutality. In 1990 only one officer was fired for brutality. In 1991, as of November 13, 1991, no officer had been fired for brutality. From July, 1993, to July, 1997, only one officer has been dismissed for brutality or other forms of misconduct which were investigated by the CCRB. These figures are in stark contrast to an increase in the number of court cases filed for brutality, which increased 50% from 1986 to 1990, from 1,027 annually to 1,558 annually.

j. Despite the lack of effective disciplinary measures by the police department, damage awards, whether by way of judgments in civil actions or by way of settlement, have increased every year, with one exception, since 1988. The money paid out by the city in damages to alleged victims of police misconduct has risen from around $7 million in 1988, to $13.5 million in 1992, to $24 million in 1994. More than $82 million was paid in damages to victims of police misconduct in 1352 cases between 1992 and 1995.

k. Since at least 1984 the defendants City of New York, New York City Police Department, Police Commissioner Howard Safir and Mayor Rudolph Giuliani have been on notice that their training of police officers has been inadequate and that police officers joining the force, including individual defendant police officers herein, were disproportionately involved in misconduct and abuse, particularly involving excessive force and brutality. See, e.g., Mayor's

Advisory Committee on Police Management and Personnel Policy, Final Report, February 24, 1987.

l. The City of New York Office of the Comptroller, in an unpublished report, found that the police often do inadequate investigations and have little training to prevent officers from repeatedly using excessive force.

m. In 1990 the Office of Special Prosecutor, which investigated charges of police corruption, was abolished.

n. In the vast majority, if not all, of the excessive force, deadly force, and other police abuse cases that result in verdicts or substantial settlements for the victims, the defendant New York City Police Department imposes no discipline, either before or after the Court resolution, almost never reopens an investigation previously conducted after such a resolution, and sometimes promotes the abusive officer to a position of greater authority despite the resolution.

o. The Commission Report of the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department ("Mollen Commission Report"), dated July 7, 1994, states:

> As important as the possible extent of brutality, is the extent of brutality tolerance we found throughout the Department. While the tolerance for brutality arises from the same set of police attitudes as the tolerance for corruption, there is an important difference. Unlike serious corruption, which most cops outwardly tolerate but inwardly deplore and resent, officers seem fairly tolerant -- both outwardly and inwardly -- of occasional police brutality. ... many do not seem to believe that anything is really wrong with a few blows and bruises now and then. Even officers who would never take a free cup of coffee, seem to tolerate what they believe is a little "street justice." An excessive us of fists to face, nightsticks to ribs, and knees to groin are seen as the realities of policing.

> ... If officers have to chase, wrestle or struggle with someone to affect an arrest, they become angry. It is hard to resist force in those circumstances, as we understandably have been told time and again. ... Police need to show who is boss in crime-ridden neighborhoods, is often the attitude. They view unnecessary force as a means to this end. The law is made by ivory tower legislators; law enforcement is achieved by those who know the streets we were told.

p. It was and is the policy of the City to give police officers suspected of unconstitutional conduct a special break – known as the "48 hour rule." The "48 hour rule" delays questioning of police suspect for two business days, a privilege that no other criminal suspect in New York enjoys and that on other police suspect in any other major city in the nation can hide behind. Moreover, it requires that when the target officer is notified, a PBA representative must be present. The PBA representatives, who are almost always members of the NYPD, hear confessions and admissions of brutality, and then conceal them from the Department, a practice condoned by the Department even though the rules and regulations of the NYPD explicitly prohibit it. Additionally, on information and belief, the PBA representatives utilize the 48 hours to assist target officers in conspiring to cover up their misconduct and thus avoid detection and punishment. In the last 20 years, hundreds of civilians have been fatally wounded by police action but only four police officers have been convicted for on duty killings since 1977.

37. The policy, practice and custom of a code of silence is evidenced, inter alia, by the following:

a. The City has been on notice for more than a generation that brutality is widespread and that particular reforms need to be implemented. From reform-minded Commissioner Patrick Murphy to the Mollen Commission twenty-five years later, the City has been repeatedly warned that a systemic tolerance for brutality flourishes throughout the NYPD. The Mollen Commission Report noted, inter alia, the following:

> Officers are often even more reluctant to report or discuss brutality than corruption perhaps because they view it as a reality of policing....
>
> ... honest and corrupt officers alike have reported that the wall of silence is even stronger when it comes to brutality. Officers are unwilling to go out on a limb and report behavior that they believe, while unlawful, is fundamentally correct.
>
> Officers are not the only ones who tolerate brutality. This tolerance, or willful blindness, extends to supervisors as well. This is because many supervisors share the perception that nothing is really wrong with a bit of unnecessary force and because they believe that this is the only way to fight crime today....
>
> In past years, the Department has refused to recognize brutality as a serious occupational hazard and failed to recognize its link to corruption. Integrity training inadequately addresses issues of brutality or brutality tolerance; intelligence-gathering efforts in the brutality area were negligible; discipline was lax; command accountability was rarely enforced in this area; and information on corruption and brutality was rarely analyzed together.

b. In none of the approximately 8,000 complaints reviewed by the CCRB in 1987 and 1988 did any police officer provided evidence in support of a complainant.

c. In the CCRB's investigations of police efforts to enforce a curfew in Tompkins Square Park on August 6 and 7, 1988, which resulted in 121 complaints against police officers, alleging 143 acts of police misconduct, mostly involving excessive force, the Police Department was unable to identify even one officer who was responsible.

d. The New York County District Attorney Robert Morgenthau has been quoted as acknowledging that in the New York City Police Department there is a "code of silence," or a "code of protection" that exists among officers and that is followed carefully.

e. In 1985 former Police Commissioner Benjamin Ward, testifying before a State Senate Committee, acknowledged the existence of the "code of silence" in the police department.

f. Anthony Bouza, formerly Bronx borough commander for the New York City Police Department, acknowledged the existence of a "code of silence" in the police department and described it as "unbelievably powerful." In fact, Bouza has stated that "[i]n New York the police code of silence is stronger than the mafia's code of omerta."

g. Former New York City Deputy Commissioner Robert Daly wrote in 1991 that the "blue wall of solidarity with its macho mores and prejudices, its cover-ups and silence, is reinforced every day in every way."

h. The "48 hour rule," whose operation is described above.

38. The policy, practice and custom of failing to properly train police officers in the use of deadly force is evidenced by the callous and reckless nature of the shooting in this case and by the fact that, on information and belief, the Department itself concluded that the shooting in this case was unjustified.

39. On information and belief, the defendants City of New York, Police Commissioner Howard Safir and Mayor Rudolph Giuliani failed to effectively screen, hire, train, supervise and discipline their police officers, including the defendant police officers herein, for their propensity for violence, including excessive and unjustified force and restraint, for racial bias, particularly with respect to the treatment of African Americans, lack of truthfulness, and for their failure to protect citizens from unconstitutional conduct of other police officers, thereby permitting and allowing the defendant police officers herein to be in a position to assault, beat

and/or excessively and unjustifiably restrain the plaintiff and to otherwise cause him injury and violate his federal and state constitutional rights, and/or to permit these actions to take place with their knowledge or consent.

40. On information and belief, the defendant police officers herein have been the subject of prior civilian and departmental complaints of misconduct that gave notice to, or should have given notice to, the defendants that the defendant police officers herein were likely to engage in conduct that would violate the civil and constitutional rights of the public, such as the conduct complained of by the plaintiff herein.

41. On information and belief, the defendants City of New York, Police Commissioner Howard Safir, and Mayor Rudophy Giuliani, maintained an inadequate structure for risk containment and stress management relative to its police officers, and failed to create proper means of containing such risk and managing such stress. Inter alia, the structure was deficient, at the time of selection of police officers and thereafter during their employment, in its ability to evaluate and exchange information within the command structure about the performance of individual police officers; in its training of supervisory personnel to effectively and adequately evaluate performance of an officer; and in its ability to otherwise put the command structure on notice that an individual or individuals were at significant levels of risk to the public at large or to specific segments thereof. The effect of this was to permit police officers of the department to function at levels of significant and substantial risk to the public in general and to the African American community in particular.

42. As a result of the foregoing conscious policies, practices, customs and/or usages, defendants City of New York, New York City Police Department, Police Commissioner Howard

Safir and Mayor Rudolph Giuliani have permitted and allowed the employment and retention of individuals as police officers whose individual circumstances place the public or segments thereof at substantial risk of being the victims of violent or racially motivated behavior. Such policies, practices, customs and/or usages are a direct and proximate cause of the conduct alleged herein and otherwise a direct and proximate cause of the injuries to the plaintiff herein.

43. As a direct and proximate result of the defendants' wrongful policies, practices, customs and/or usages complained of herein, the plaintiff's decedent suffered physical, mental and emotional injury and pain, mental anguish, suffering, and ultimately death.

WHEREFORE, the Plaintiffs demand the following relief jointly and severally against all of the Defendants:

a. Compensatory damages for Plaintiffs in the amount of $10,000,000;

b. Punitive damages for the Plaintiffs in the amount of $10,000,000;

c. The convening and empanelling of a jury to consider the merits of the claims herein;

d. A court order, pursuant to 42 U.S.C. §1988, that the Plaintiffs are entitled to the costs involved in maintaining this action and attorneys' fees;

e. Such other and further relief as this court may deem appropriate and equitable, including injunctive and declaratory relief as may be required in the interests of justice.

DATED: January 11, 1999
New York, New York

WILLIAM H. GOODMAN (WG-6499)
CENTER FOR CONSTITUTIONAL RIGHTS
666 Broadway, 7th Floor
New York, New York 10012

JONATHAN C. MOORE, Esq. (JM-6902)
MICHAEL DEUTSCH
740 Broadway - Fifth Floor
New York, New York 10003
(212) 353-9587

Attorneys for the Plaintiffs

Gleeson 99cv160 Go

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (For more detailed instructions, see separate instruction sheet.)

PLAINTIFFS

LILLIAN FLORES, Individually and as Administratrix of the goods, chattels and credits that were of Frankie Arzuaga, deceased

COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Kings
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

THE CITY OF NEW YORK, a municipal corporation, RUDOLPH GIULIANI, Mayor of the City of New York HOWARD SAFIR, Commissioner of the New York City Police Department; JAMES HAND, Sergeant; ALFRED SANDURO, police officer; DIANA SIERRA, police officer, in their individual and official capacities jointly and severally

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT NY
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

CCR
666 Broadway
NY, NY 10012
(212) 6146427

Jonathan C. Moore
740 Broadway - 5th Floor
NY, NY 10003
(212) 353-9587

ATTORNEYS (IF KNOWN)

Corporation Counsel of the City of New York
New York City Department of Law
100 Church Street
NY, NY 10007

IN CLERK'S OFFICE U.S. DISTRICT COURT E.D.N.Y. JAN 11 1999

GLEESON, J.

GO, M.J.

(PLACE AN X IN ONE BOX ONLY) **BASIS OF JURISDICTION**

☐ 1 U.S. PLAINTIFF ☐ 2 U.S. DEFENDANT ☒ 3 FEDERAL QUESTION (U.S. NOT A PARTY) ☐ 4 DIVERSITY

IF DIVERSITY, INDICATE CITIZENSHIP ON REVERSE. (28 USC 1332, 1441)

CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE)

Action brought pursuant to 42 U.S.C. Sec. 1983, 1988 and the 4th and 14th Amendments to the US Constitution for the wrongful death of the plaintiff's decedent.

(PLACE AN X IN ONE BOX ONLY) **NATURE OF SUIT**

CONTRACT	TORTS	CIVIL RIGHTS	FORFEITURE PENALTY	BANKRUPTCY	OTHER STATUTES Cont
☐ 110 INSURANCE	PERSONAL INJURY	☐ 441 VOTING	☐ 610 AGRICULTURE	☐ 420 TRUSTEE	☐ 450 COMMERCE ICC RATES ETC
☐ 120 MARINE	☐ 310 AIRPLANE	☐ 442 JOBS	☐ 620 FOOD & DRUG	☐ 421 TRANSFER (915b)	☐ 460 DEPORTATION
☐ 130 MILLER ACT	☐ 315 AIRPLANE PRODUCT LIABILITY	☐ 443 ACCOMMODATIONS	☐ 630 LIQUOR LAWS	☐ 422 APPEAL (801)	☐ 810 SELECTIVE SERVICE
☐ 140 NEGOTIABLE INSTRUMENT	☐ 320 ASSAULT LIBEL & SLANDER	☐ 444 WELFARE	☐ 640 R.R. & TRUCK	PROPERTY RIGHTS	☐ 850 SECURITIES COMMODITIES EXCHANGE
☐ 150 RECOVERY OF OVERPAYMENT & ENFORCEMENT OF JUDGMENT	☐ 330 FEDERAL EMPLOYERS LIABILITY	☒ 440 OTHER CIVIL RIGHTS	☐ 650 AIRLINES REGS	☐ 820 COPYRIGHT	☐ 891 AGRICULTURAL ACTS
☐ 151 MEDICARE ACT	☐ 340 MARINE		☐ 660 OCCUPATIONAL SAFETY/HEALTH	☐ 830 PATENT	☐ 892 ECONOMIC STABILIZATION ACT
☐ 152 RECOVERY OF DEFAULTED STUDENT LOANS	☐ 345 MARINE PRODUCT LIABILITY		☐ 690 OTHER	☐ 840 TRADEMARK	☐ 893 ENVIRONMENTAL MATTERS
☐ 153 RECOVERY OF OVERPAYMENT OF VETERANS BENEFITS	☐ 350 MOTOR VEHICLE			SOCIAL SECURITY	☐ 894 ENERGY ALLOCATION ACT
☐ 160 STOCKHOLDERS SUITS	☐ 355 MOTOR VEHICLE PRODUCT LIABILITY			☐ 861 HIA (1395ff)	☐ 895 FREEDOM OF INFORMATION ACT
☐ 190 OTHER CONTRACT	☐ 360 OTHER PERSONAL INJURY			☐ 862 BLACK LUNG (923)	☐ 900 APPEAL OF FEE DETERMINATION UNDER EQUAL ACCESS TO JUSTICE
☐ 195 CONTRACT PRODUCT LIABILITY	☐ 362 PERSONAL INJURY—MED MALPRACTICE			☐ 863 DIWC (405 (g))	☐ 950 CONSTITUTIONALITY OF STATE STATUTES
	☐ 365 PERSONAL INJURY PRODUCT LIABILITY			☐ 863 DIWW (405 (g))	☐ 890 OTHER STATUTORY ACTIONS
				☐ 864 SSID Title XVI	
				☐ 865 RSI (405 (g))	
REAL PROPERTY	PERSONAL PROPERTY	PRISONER PETITIONS	LABOR	TAX SUITS	
☐ 210 CONDEMNATION	☐ 370 OTHER FRAUD	☐ 510 VACATE SENTENCE (2255)	☐ 710 FAIR LABOR STANDARDS	☐ 870 TAXES	
☐ 220 FORECLOSURE	☐ 371 TRUTH IN LENDING	☐ 530 HABEAS CORPUS	☐ 720 LABOR/MGMT RELATIONS	☐ 871 IRS-THIRD PARTY 26 USC 7609	
☐ 230 RENT LEASE & EJECTMENT	☐ 380 OTHER PERSONAL PROPERTY	☐ 540 MANDAMUS & OTHER	☐ 730 LABOR/MGMT REPORTING & DISCLOSURE ACT	☐ 875 CUSTOMER CHALLENGE 12 USC 3410	
☐ 240 TORTS TO LAND	☐ 385 PROPERTY DAMAGE PRODUCT LIABILITY	☐ 550 CIVIL RIGHTS	☐ 740 RAILWAY LABOR ACT	OTHER STATUTES	
☐ 245 TORT PRODUCT LIABILITY			☐ 790 OTHER LABOR LITIGATION	☐ 400 STATE REAPPORTIONMENT	
☐ 290 ALL OTHER REAL PROPERTY			☐ 791 EMPL. RET. INC. SECURITY ACT	☐ 410 ANTI-TRUST	
				☐ 430 BANKS AND BANKING	

(PLACE AN X IN ONE BOX ONLY) **ORIGIN**

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

UNITED STATES DISTRICT COURT

(Continued on Reverse Side)
(Revised 8/87)

CITIZENSHIP OF PRINCIPAL PARTIES (IF DIVERSITY)

	PTF	DEF
CITIZEN OF THIS STATE	☐ 1	☐ 1
INCORPORATED THIS STATE	☐ 2	☐ 2
FOREIGN CORPORATION-PRINCIPAL PLACE OF BUSINESS IN ______ STATE	☐ 3	☐ 3
OTHER NON-CITIZEN OF THIS STATE	☐ 4	☐ 4

Check YES only if demanded in complaint:
JURY DEMAND ☒ *Yes* ☐ *No*

Check/Fill in if demanded in complaint

☐ CHECK IF THIS IS A CLASS ACTION UNDER F R C.P. 23 | DEMAND $ 20 million | OTHER

RELATED CASE(S) IF ANY

NONE

JUDGE ______________________ DOCKET NUMBER ______________

CIVIL CASES ARE DEEMED RELATED IF PENDING CASE INVOLVED

☐ *1. PROPERTY INCLUDED IN AN EARLIER NUMBERED PENDING SUIT*
☐ *2. SAME ISSUE OF FACT OR GROWS OUT OF THE SAME TRANSACTION*
☐ *3. VALIDITY OR INFRINGEMENT OF THE SAME PATENT COPYRIGHT OR TRADEMARK*

ARBITRATION CERTIFICATION

I, Jonathan C. Moore, Esq., counsel for ~~Lillian Flores, individually and as administratrix~~ do hereby certify pursuant to the Local Arbitration Rule Section 3(c), that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of $100,000 exclusive of interest and costs.

______________ *Relief other than monetary damages is sought.*

DISCLOSURE OF INTERESTED PARTIES—LOCAL RULE 9

Identify any corporate parents, subsidiaries or affiliates of named corporate parties:

None

Did the cause of action arise in Nassau or Suffolk County? NO

If you answered yes, please indicate which county. ______________

County of residence of plaintiff(s) (1) Kings

(2) ______________

(3) ______________

Others ______________

County of residence of defendant(s) (1) New York

(2) ______________

(3) ______________

Others ______________

I am currently a member in good standing of the bar of this Court.

YES X NO ______

Date: 1/11/99 Signature of Attorney of Record: Jonathan C. Moore